

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
CENTRAL DIVISION**

CONCORD BAPTIST CHURCH
OF JEFFERSON CITY, INC.,

Plaintiff/Counterclaim Defendant,

v.

CHURCH MUTUAL INSURANCE
COMPANY,

Defendant/Counterclaim Plaintiff.

No. 2:21-CV-4046-WJE

ORDER

Pending before the Court is Plaintiff Concord Baptist Church of Jefferson City, Inc.’s (“Concord Baptist Church”) Motion to Compel Appraisal (Doc. 17) and Suggestions in Support (Doc. 17-1). Defendant Church Mutual Insurance Company (“Church Mutual”) has filed its Suggestions in Opposition (Doc. 19), and Concord Baptist Church has filed its Reply (Doc. 22). The issue is now ripe and ready to be ruled upon. Because the appraisal process is not appropriate for resolving questions of coverage, the Court will deny Concord Baptist Church’s Motion to Compel Appraisal.

I. BACKGROUND

Concord Baptist Church claims it sustained substantial property damage during a severe weather storm, which included significant wind, hail, and lightning, on March 27, 2020. (Doc. 1-1 at ¶ 12). Concord Baptist Church asserts it gave Church Mutual timely notice of the property damage on March 30, 2020, but that the parties ultimately failed to agree on the total damages incurred. (*Id.* at ¶ 13). On February 18, 2021, after the parties also failed to agree on the terms

for an appraisal, Concord Baptist Church filed this civil action against Church Mutual in the Circuit Court of Cole County, Missouri, alleging breach of contract and vexatious refusal to pay. (Docs. 1, 1-1).

On March 10, 2021, Church Mutual removed this case to federal court (Doc. 1), and filed its Answer, Affirmative Defenses, and Counterclaim (Doc. 2). Seeking declaratory judgment, Church Mutual states that it investigated Concord Baptist Church's claim and issued payment to Concord Baptist Church in the amount of \$237,852.24, representing the actual cash value of the covered loss, less the deductible. (*Id.* at ¶ 11). Church Mutual "determined that any remaining claims for damages were not covered as they were cosmetic in nature and the Policy excludes coverage for cosmetic damages." (*Id.* at ¶ 12). It suggests Concord Baptist Church "is not entitled to appraisal because the Policy provides that appraisal is only proper when there is a disagreement on the value of the property or the amount of loss." (*Id.* at ¶ 30). Finally, Church Mutual claims it has sustained damage as a result of Concord Baptist Church's breaches of the Policy conditions in that "it has incurred substantial costs and expenses for claim response, investigation, adjusting and evaluating and attorneys' fees, which continue to accrue." (*Id.* at ¶ 32).

II. APPLICABLE LAW

"The Missouri Supreme Court has held that the appraisal process is not appropriate for resolving questions of coverage." *Certain Underwriters at Lloyd's, London Subscribing to Certificate No. IPSI 12559 v. SSDD, LLC*, 4:13-CV-193 CAS, 2013 WL 2403843, at *8 (E.D. Mo. May 31, 2013) (citing *Hawkinson Tread Tire Service Co. v. Indiana Lumbermens Mutual Insurance Co.*, 245 S.W.2d 24, 28 (Mo. 1951)). "In contrast, where the parties' disagreement is over the amount of loss, appraisal is appropriate." *Id.* Disputes over the existence of covered losses and claims that a party failed to comply with its obligations under an insurance policy are both

questions of coverage. *Am. Family Mut., Ins. Co. v. Dixon*, 450 S.W.3d 831, 835 (Mo. Ct. App. 2014); *id.* at *8.

III. ANALYSIS

Here, Concord Baptist Church maintains that because the parties agree there is a covered loss but disagree on the amount of loss, that an appraisal should be ordered. This Court disagrees that the dispute here is only as to the amount of loss. Church Mutual alleges that “certain portions of the claim [are] not covered, including those damages to the metal panel roofing that were cosmetic in nature, as well as that the EPDM roofing materials were not damaged by the storm event.” (Docs. 17-5, 17-8). Church Mutual alleges also that Concord Baptist Church has breached the cooperation clause of the Policy. Accordingly, this Court thus finds that coverage is at issue, and an appraisal is not proper.

IV. CONCLUSION

Accordingly, it is hereby ORDERED that Concord Baptist Church’s Motion to Compel Appraisal (Doc. 17) is DENIED.

Dated this 14th day of July, 2021, at Jefferson City, Missouri.



Willie J. Epps, Jr.
United States Magistrate Judge